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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN KIM,

Defendant and Appellant.

D073595

(Super. Ct. No. SWF1401563)

APPEAL from a judgment of the Superior Court of Riverside County, John M. Monterosso, Judge. Affirmed with directions.

Gordon S. Brownell, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., Randall D. Einhorn and Susan Elizabeth Miller, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Jonathan Kim of the first degree murder of Wileysa G., with the special circumstance of lying in wait (Pen. Code,¹ §§ 187, subd. (a), 190.2, subd. (a)(15); count 1), and attempted murder of Samantha F. (§§ 664, 187, subd. (a); count 2). The jury found that Kim personally used a deadly or dangerous weapon while committing each offense (§§ 12022, subd. (b)(1), 1192.7, subd. (c)(23)) and that he personally inflicted great bodily injury upon Samantha (§§ 12022.7, subd. (a), 1192.7, subd. (c)(8)). In separate proceedings, Kim admitted one prior serious felony conviction (§667, subd. (a)), which is a strike prior. The court sentenced Kim to prison for 33 years plus life without the possibility of parole, which includes in each count a five-year enhancement for the prior serious felony conviction.

On appeal Kim contends the jury's lying-in-wait special circumstance finding is not supported by sufficient evidence. We reject that contention. Kim also asserts that the abstracts of judgment should be corrected to accurately reflect the enhancements on the determinate and indeterminate sentences. The Attorney General agrees these corrections should be made

After we filed our opinion affirming the judgment and directing the trial court to correct the abstracts of judgment, Kim filed a petition for rehearing solely on the grounds that about two weeks before we filed our opinion, the Governor signed Senate Bill No. 1393, giving the trial court discretion to strike a prior serious felony conviction enhancement under section 667, subdivision (a)(1). Kim asserted this statutory

¹ Undesignated statutory references are to the Penal Code.

amendment is retroactive to all cases, like his, which are not final as of the statutory amendment's effective date.

We granted Kim's rehearing petition and provided the parties with an opportunity to submit supplemental briefing addressing the potential effect of Senate Bill No. 1393 (Stats. 2018, ch. 1013) on Kim's case.

Having considered those supplemental briefs, we reissue our original opinion affirming the judgment of conviction and directing the abstracts of judgment to be corrected. Although we agree with Kim that Senate Bill No. 1393 applies to his case, we conclude it is unnecessary to remand for resentencing because the record unequivocally demonstrates that the trial court would not exercise its discretion to strike or dismiss Kim's prior serious felony conviction enhancement.

FACTUAL BACKGROUND

A. Count 1—Attempted Murder

On May 14, 2014, Samantha F. was living with Kaylin K. in an apartment in Temecula. At around 11 p.m. Samantha fell asleep on the living room couch. At around 12:30 a.m., Kaylin made sure the front door was locked, left the lights on, and went to sleep in her bedroom.

At around 2:50 a.m. (May 15), Samantha awakened, screaming when she felt something sharp and felt blood gushing out of her neck. She saw a man walking out the front door of the apartment.

Hearing Samantha's scream, Kaylin ran out of her bedroom, got a towel to stop the bleeding, and called 911. While talking with the 911 dispatcher, Kaylin checked the

front door. It was closed, but unlocked. Then she checked the living room window. The screen had been removed and the window was open.

Police found two knives about four feet from the apartment's front door. One of them was pink and did not belong to Kaylin or Samantha. Another had a black handle, which did not match any knives in the apartment.

Kim lived in the same apartment complex, and police later matched Kim's finger and palm prints to those on the window and screen.

B. Count 2—Murder

In May 2014 Noval P. and her friend, Wileysa G., were working as prostitutes out of Wileysa's Temecula home. Early in the morning of May 15 they posted Internet ads for their services. Kim saw Wileysa's ad and arranged for her to pick him up at his apartment and drive him back to her house.

Wileysa picked up Kim and returned home with him at 8:52 a.m. Noval, who was upstairs when they arrived, went downstairs to the living room as Wileysa and Kim walked past her on their way to the upstairs master bedroom. Noval said, "Hi" to Kim, who replied, "Hi." Noval asked Wileysa, "Are you straight?" Wileysa responded, "Yeah, I'm good. I'm fine. I'm cool."

Noval heard the bedroom door close. About 30 seconds to a minute later, she heard a "large thump" or "wrestling" sounds from the bedroom, as if someone was fighting.

Noval ran upstairs. The bedroom door had no doorknob, but instead a deadbolt which locked from the inside. Noval pushed on the door, but it was locked. She pushed again; this time it opened.

Wileysha came out, fully clothed, looking scared, and holding her neck. When Wileysha moved her hand from her neck to grab the banister, blood "spray[ed] everywhere."

By this time, Kim was in the hallway, facing Noval, and running down the stairs. As he passed Noval, she pushed him down the stairs. Kim fell, got up, and ran out the front door.

Screaming, Noval ran after Kim, who was now running on the street, away from the house. After a short chase, Noval returned to the house to attend to Wileysha, who was on the floor—crying, gagging, and choking on her own blood.

Kim had stabbed Wileysha twice—once on the right side of her neck, completely severing the external jugular vein and carotid artery, and also on the left, cutting through her esophagus. Both stabs were front to back. Noval applied pressure to the wounds with a towel, but the bleeding would not stop. Wileysha was dead by 9:07 a.m.

Meanwhile, a neighbor who heard Noval screaming got in his car and followed Kim. He alerted police, who arrested Kim at a nearby home improvement store.

At Wileysha's home police found blood spatter on the inside of the master bedroom wall and matching splatter on the back side of the door, indicating that Wileysha had been stabbed inside the bedroom while the door was closed. There was

also a large amount of blood on the bedroom carpet. Police found a red knife inside the master bedroom. After searching Kim's flight path, police recovered a red knife sheath.

A forensic pathologist found no cuts, nicks, scrapes or anything similar on Wileysa's right forearm and right shoulder. Wileysa had no defensive wounds on her right hand and arm, and only one defensive-type wound to her left index finger and a partially torn fingernail on her left pinky finger. From these findings, the pathologist opined that Wileysa was overcome quickly and had no time to defend herself.

At the time of his arrest, Kim's shirt, shorts, socks, and shoes had blood on them. DNA analysis showed that blood was Wileysa's. DNA analysis also showed that Wileysa's blood was on the red knife's blade.

After obtaining a search warrant for Kim's residence, police found a pink knife sheath that matched the pink knife found at Samantha's apartment. Police also found several other colored knives in Kim's kitchen.

Police determined that the red knife found in Wileysa's bedroom and the pink knife found outside Samantha's door were part of a set of knives sold exclusively at a club store. The set contained one red knife, a pink knife, a blue knife, a green knife, and a yellow knife, along with matching colored sheaths. Police found a set of those knives in Kim's apartment; however, the pink and red knives were missing. The pink knife found outside the front door of Samantha's apartment fit inside the pink sheath found in Kim's apartment.

C. Defense Motion—Lying-in-Wait Special Circumstance

After the People rested, Kim's attorney brought a motion under section 1118.1 to dismiss the lying-in-wait special circumstance. The court denied the motion, stating in part: "The fact that he did not immediately attack [Wileysha] upon getting in the car, nor did he attack her on immediately entering the home, but rather waited until he was behind a locked, closed door in the bedroom is also strong evidence that he intended to conceal his purpose until he was in a place of relative privacy and safety to where he could act with surprise The fact that the other witness who was in the home stated that the attack occurred almost immediately after that door was closed shows that the defendant simply waited for the opportune moment [¶] This evidence is extremely powerful in my mind to demonstrate the attempt to make a surprise attack on a person and [that he] did indeed attack [Wileysha] by surprise."

D. Defense Case

Kim's father, David, testified that in elementary school Kim was diagnosed with attention deficit disorder (ADHD). Starting at about age 12, Kim could not control his anger and had mood swings. Kim's behavior problems worsened as he got older, and he was later diagnosed with bipolar disorder.

When Kim was in high school, he was violent towards his father. Kim's parents sent him to boarding school for one year; however, Kim returned home at age 18 and was taking drugs and getting worse. In 2013 Kim was treated at a psychiatric clinic after saying he "heard strange sounds" and "saw strange things."

In 2014 Kim continued having visual and auditory hallucinations and was treated by a psychiatrist who prescribed medication. The psychiatrist recommended that Kim's parents keep constant watch over Kim. Accordingly, David and his wife "stopped all other activities" and lived in the Temecula apartment with Kim.

In March 2014 Kim unsuccessfully attempted suicide. In the days before these May 2014 stabbings, Kim was placed on a 72-hour psychiatric hold because he was complaining of seeing "strange things" and threatening suicide. A few days before he attacked Samantha and killed Wileysa, Kim was released from the hospital, despite having severe mood swings. On the night of the attacks Kim had probably not taken his medication.

Robert Lark, a forensic neurological psychologist, reviewed some of Kim's medical records and met with him to conduct a "mental-status examination." Dr. Lark testified that Kim's violent outbursts were consistent with bipolar disorder, and "[i]t's not uncommon in manic states to reach the level of psychosis" In response to a hypothetical question, Dr. Lark testified that "[i]ndividuals in manic phases are more prone to act out impulsively."

On cross-examination, Dr. Lark testified that Kim does not have any organic brain disease or brain injury and that he has average intelligence. Dr. Lark conceded that Kim could concentrate, had "some ability to focus," and had the ability to plan. Dr. Lark acknowledged that tests administered to Kim two days after his arrest showed that Kim was "greatly exaggerating" his mental illness.

DISCUSSION

I. SUBSTANTIAL EVIDENCE SUPPORTS THE JURY'S LYING-IN-WAIT FINDING

A. Kim's Contention

Under California law, the special circumstance of murder while lying in wait requires "an intentional murder, committed under circumstances which include (1) a concealment of purpose, (2) a substantial period of watching and waiting for an opportune time to act, and (3) immediately thereafter, a surprise attack on an unsuspecting victim from a position of advantage." (*People v. Casares* (2016) 62 Cal.4th 808, 827.)

Kim challenges the sufficiency of evidence *only* as to the third element—whether he killed "from a position of advantage." Kim contends "no substantial evidence showed that [he] had any 'position of advantage'" because "the physical evidence did not show that he attacked [Wileysha] from behind, or in the dark, or while she was sleeping, urinating, or otherwise engaged in activity that made her particularly vulnerable to an attack."

B. The Standard of Review

"A sufficiency of evidence challenge to a special circumstance finding is reviewed under the same test applied to a conviction." (*People v. Stevens* (2007) 41 Cal.4th 182, 201.) Our role in reviewing a sufficiency of the evidence claim is limited. (*People v. Smith* (2005) 37 Cal.4th 733, 738.) We examine the entire record in the light most favorable to the judgment and determine whether the evidence is of such solid value that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.

(*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 294.) "[W]e do not reweigh the evidence, resolve conflicts in the evidence, . . . or reevaluate the credibility of witnesses." (*People v. Little* (2004) 115 Cal.App.4th 766, 771.) The testimony of a single witness, if believed by the jury, is sufficient to support a conviction, unless that testimony is physically impossible or inherently improbable. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

C. Analysis

The "position of advantage" element of lying in wait refers to the killer's relative advantage over the victim. (See *People v. Jantz* (2006) 137 Cal.App.4th 1283, 1290-1291.) For example, in *People v. Edwards* (1991) 54 Cal.3d 787 (*Edwards*), the defendant drove his truck slowly toward two girls at a camp site, turned his truck around, and then followed them for about a quarter mile as the girls walked to a picnic spot for lunch. As the girls were walking, defendant drove alongside them, stopped, and said, "Girls." (*Id.* at pp. 804-805.) The defendant immediately fired two shots from a pistol, first at one girl, then at the other. (*Id.* at p. 805.) The court found sufficient evidence to support the lying-in-wait special circumstance finding. (*Id.* at pp. 825-826.) The court observed: "Defendant drove alongside the victims where there were no witnesses and where they would be most vulnerable. While they were completely unsuspecting, he called to them so they would look his way and become ideal live targets. After gaining this position of advantage, he shot and killed." (*Id.* at p. 825.) The court held that "a 'situation where the victim is taken unawares and by surprise,' combined with an intent to kill, necessarily places the intended killer in a position of advantage." (*Id.* at p. 823.)

A surprise attack on an unsuspecting victim from a position of advantage also occurs when the killer uses pretense to conceal his purpose to kill and has held off his attack until he has a relative advantage over the victim. (See, e.g., *People v. Hillhouse* (2002) 27 Cal.4th 469, 501.) The "position of advantage" requirement may be satisfied where the defendant attacks the victim in a place with no witnesses, and where the victim would be the most vulnerable, ignorant of the defendant's intention to kill. (*Edwards, supra*, 54 Cal.3d at p. 825.)

The jury's finding that Kim held a position of advantage is supported by substantial evidence. Kim lured Wileysa to be alone with him in an isolated location—her locked bedroom—by feigning to be a prostitution client. On the way to the bedroom, Wileysa told Noval she was "fine" and everything was "cool." From this, the jury could reasonably conclude that in their brief time together (driving from Kim's apartment to Wileysa's house) Kim's behavior gave Wileysa no reason to fear for her safety. By thus gaining her confidence and by concealing the knife, Kim executed a surprise attack. The absence of any significant defensive wounds indicates that Wileysa did not have time to defend herself and, because Wileysa was alone behind the locked bedroom door, she was unable to summon help. If Wileysa had seen the knife before Kim plunged it in her neck, she undoubtedly would have screamed and put up her hands to fight. She never got the chance. The blood spatter on the inside of the bedroom door showed that Kim overpowered Wileysa soon after the door was closed. (See *People v. Webster* (1991) 54 Cal.3d 411, 448 [finding sufficient evidence that defendant held a position of advantage by luring the victim to an isolated location on a pretext]; *People v. Livingston* (2012) 53

Cal.4th 1145, 1173 [killing victim trapped in small room shows defendant attacked from a position of advantage].)

Disagreeing with this analysis, Kim contends there is insufficient evidence of lying in wait because he did not attack Wileysa "from behind, or in the dark, or while she was sleeping, urinating, or otherwise engaged in activity that made her particularly vulnerable to an attack." He contends the forensic evidence shows that Wileysa was facing Kim when he stabbed her, and thus distinguishes Kim's case from numerous other cases where courts have upheld a lying-in-wait finding because the victim was blindsided.

At its core, Kim's argument is that because Wileysa was facing Kim when he stabbed her, the jury was *required* to find that he did not kill from a position of advantage. Certainly, the jury was entitled to consider the inferences Kim urges on appeal. However, his argument fails because we are required to view the evidence in a light most favorable to the judgment. "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment." (*People v. Cravens* (2012) 53 Cal.4th 500, 508.) Reversal is not warranted merely because the circumstances might also be reasonably reconciled with a contrary finding. (*People v. Olea* (1971) 15 Cal.App.3d 508, 513.) No rule prohibits a jury from finding a defendant killed by lying in wait simply because the killer and victim were facing each other. Indeed, in several cases, the California Supreme Court has upheld a finding that a murder was done by lying in wait where the victim and killer were

facing each other. For example, in *People v. Mendoza* (2011) 52 Cal.4th 1056, the defendant shot the victim, a police officer, in the face from a distance of less than three feet. (*Id.* at p. 1065.) The California Supreme Court affirmed a lying-in-wait finding, stating that although the officer was aware of the defendant's physical presence the evidence showed that the defendant concealed his murderous purpose so well that he took the victim completely by surprise when he fired a single deadly shot at close range. The court held: "From this evidence, a rational jury could infer that defendant did not kill out of rash impulse, but rather in a purposeful manner that required stealth and maneuvering to gain a position of advantage over the unsuspecting officer." (*Id.* at p. 1074.) Similarly here, Kim concealed his purpose so well, that literally minutes before Kim stabbed her in the neck Wileysa told Noval she was "fine" and "cool." And, as in *Mendoza*, the absence of any significant defensive wounds shows that Kim took his victim completely by surprise from a position of advantage.

People v. Cage (2015) 62 Cal.4th 256 also involved a face-to-face killing. There, the defendant hid a shotgun in a laundry basket of clothes and went to the victim's house. When the victim opened the front door, the defendant fatally shot her in the face. (*Id.* at p. 263.) The California Supreme Court held that a jury could rationally conclude that the defendant planned and undertook a deliberate subterfuge aimed at making his presence appear to be innocuous so that the victim would open the door and admit him. (*Id.* at p. 279.) The ruse disguised his intent to kill. The Court held that the jury could also reasonably determine on these facts that the defendant attacked the unsuspecting victim from a position of advantage. (*Id.* at p. 280.)

II. *THE ABSTRACTS OF JUDGMENT SHOULD BE CORRECTED*

Kim and the People agree there are errors in the abstracts of judgment for the indeterminate and determinate sentences that should be corrected to conform to the oral pronouncement of judgment. Appellate courts may order correction of abstracts of judgment that do not accurately reflect the oral statements of sentencing courts. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) "Where there is a discrepancy between the oral pronouncement of judgment and the . . . abstract of judgment, the oral pronouncement controls." (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385.) "[T]he abstract of judgment is not the judgment of conviction and it cannot add to or modify the judgment which it purports to digest or summarize." (*People v. Caudillo* (1980) 101 Cal.App.3d 122, 126.)

In sentencing Kim, the court imposed the upper term of nine years on count 2 (attempted murder). After doubling that term to 18 years based on the strike conviction, the court imposed three sentencing enhancements to that count: (1) one year consecutively for personally using a deadly or dangerous weapon (§ 12022, subd. (b)(1)); (2) three years consecutively for inflicting great bodily injury (§ 12022.7, subd. (a)), and five years consecutively for a prior serious felony conviction under section 667, subdivision (a). Thus, the total determinate term on count 2 is 27 years.

On count 1 (murder, lying in wait), the court imposed life without the possibility of parole. Additionally, the court imposed a determinate term of one year for using a deadly or dangerous weapon and five years for the prior serious felony conviction, for a total of six years determinate plus life without the possibility of parole, consecutively.

Thus, the total determinate term as to counts 1 and 2 is 33 years, with count 1 to be served consecutively, plus life without the possibility of parole.

The court prepared two separate abstracts of judgment: one for the indeterminate term (count 1) and a separate abstract of judgment for the determinate term (count 2).

However, the abstracts of judgment reflect that *all* of the sentencing enhancements were added to the determinate sentence and none to the indeterminate sentence. This does not reflect the oral pronouncement of judgment. As indicated above, Kim's determinate sentence for attempted murder was increased by 27 years, and his indeterminate sentence for murder was increased by six years determinate term. Both abstracts of judgment must be corrected.

III. SENATE BILL No. 1393 ISSUES

A. Additional Background

Outside the jury's presence, Kim admitted that he suffered a prior conviction for assault with a deadly weapon, which the People charged as both a prior serious felony conviction and a strike prior.

At sentencing, Kim's attorney brought a motion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 to dismiss the strike prior. The court denied that motion, stating, "[I]t's impossible to conceive of a more appropriate person to not have a strike dismissed, and that is Mr. Kim. The reason being that he was convicted and on parole for a serious and violent felony, that being assault with a deadly weapon, during the time he was on parole for that offense, he commits the crimes for which he stands convicted today. So, by no stretch of one's imagination can one find he falls outside the spirit or the

scheme of the three-strikes law. He's exactly what the law was written for." The court recognized the "mental health struggles Mr. Kim has had"; however, the court determined that factor does not "even come close to mitigating the situation to where . . . his conduct deserves an extra consideration by striking his prior."

The court noted that under then-existing law, "the law requires" imposing a five-year enhancement for the prior serious felony conviction on each of the two counts on which Kim was convicted. After hearing from Wileysa's family members, the court sentenced Kim on count 2 (attempted murder) to the upper term of nine years. The court stated that this crime "involved great violence and disclosed a high degree of cruelty, viciousness, or callousness." The court commented that Samantha was "particularly vulnerable" because she was sleeping and "completely defenseless as she slept." The court characterized the attempted murder as "the nightmare of any person" who would be awakened by "a knife plunged into [the victim's] throat." The court found "no factors in mitigation" and rejected Kim's evidence of "mental illness not amounting to a defense." After doubling that nine-year term because of the prior strike conviction, the court also sentenced Kim to a consecutive one-year term for personal use of a knife, three years consecutively for causing great bodily injury, and five years consecutively for the prior serious felony conviction under section 667, subdivision (a)(1)—for a total determinate term of 27 years on count 2.

On count 1 (murder), the court sentenced Kim to life without the possibility of parole, plus a determinate term of one year for personally using a deadly weapon

(§ 12022, subd. (b)(1)) plus a five-year consecutive term for the prior serious felony conviction under section 667, subdivision (a)(1).

The court imposed consecutive sentences on counts 1 and 2 because "even if it were discretionary," the counts involved separate crimes, on separate occasions, with separate "objectives and separate victims." The court ended the sentencing hearing by stating:

"I've seen a lot of things in twenty-five years in this business. There are very few crimes I would characterize as just pure unadulterated evil, and this is one of them."

B. Prior Serious Felony Enhancement

Effective January 1, 2019, Senate Bill No. 1393 amends sections 667 and 1385 to give the trial court discretion to dismiss, in the interest of justice, five-year prior serious felony enhancements under section 667, subdivision (a)(1). (*People v. Garcia* (2018) 28 Cal.App.5th 961, 971 (*Garcia*).) Under the versions of those statutes applicable when the court sentenced Kim, the court had no such discretion, but instead was required to impose a five-year consecutive term for any person convicted of a serious felony who previously has been convicted of a serious felony. (*Ibid.*)

"[I]t is appropriate to infer, as a matter of statutory construction, that the Legislature intended Senate Bill [No.] 1393 to apply to all cases to which it could constitutionally be applied, that is, to all cases not yet final when Senate Bill [No.] 1393 becomes effective on January 1, 2019." (*Garcia, supra*, 28 Cal.App.5th at p. 973.) Moreover, the Attorney General concedes that Senate Bill No. 1393 applies retroactively to Kim's nonfinal case.

"[W]hen the record shows that the trial court proceeded with sentencing on the . . . assumption it lacked discretion, remand is necessary so that the trial court may have the opportunity to exercise its sentencing discretion at a new sentencing hearing." (*People v. McDaniels* (2018) 22 Cal.App.5th 420, 425 (*McDaniels*). A remand is not required, however, if "the record shows that the trial court clearly indicated when it originally sentenced the defendant that it would not in any event have stricken [the previously mandatory] enhancement." (*Ibid.*; see also *People v. Almanza* (2018) 24 Cal.App.5th 1104, 1110 [on rehearing, agreeing with *McDaniels*].)

In determining whether remand is required, a key question is whether the trial court "express[ed] its intent to impose the maximum sentence permitted." (*McDaniels*, *supra*, 22 Cal.App.5th at p. 427.) "When such an expression is reflected in the appellate record, a remand would be an idle act because the record contains a clear indication that the court will not exercise its discretion in the defendant's favor." (*Ibid.*) For example, in *People v. McVey* (2018) 24 Cal.App.5th 405, where the trial court made a "deliberate choice of the highest possible term" for a firearm enhancement, the record showed "no possibility" that if the case were remanded, the trial court would exercise its discretion to strike the enhancement. (*Id.* at p. 419.)

Here, in light of the trial court's pointed comments on the record about the evil nature of Kim's crimes, his recidivism, and the court's deliberate choice of the highest possible term on count 2, there is no possibility that, if the case were remanded, the trial court would exercise its discretion to strike the prior serious felony conviction enhancement. After the trial court's careful and deliberate fashioning of Kim's sentence,

remand in these circumstances would serve no purpose but to squander scarce judicial resources. (See *McDaniels, supra*, 22 Cal.App.5th at p. 427; *People v. Gutierrez* (1996) 48 Cal.App.4th 1894, 1896 [declining to remand for *Romero* hearing where the trial court indicated the defendant was "the kind of individual the law was intended to keep off the street as long as possible"].)

DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstracts of judgment as follows: (1) the abstract of judgment for the determinate sentence should be corrected to show only one prior serious felony conviction enhancement under section 667, subdivision (a), and the abstract of judgment for the indeterminate sentence should be corrected to show one prior serious felony conviction enhancement under section 667, subdivision (a); (2) the abstract of judgment for the determinate sentence should delete one of the references to the one-year enhancement under section 12022, subdivision (b)(1), and (3) that enhancement should be reflected on the indeterminate sentence

abstract of judgment. The court shall forward a certified copy of this amended abstract to the Department of Corrections and Rehabilitation.

NARES, Acting P. J.

WE CONCUR:

DATO, J.

GUERRERO, J.